


MISSISSIPPI



CRIMINAL LAW UPDATE
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Links to opinions discussed are in the handout.

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Affirmative Defenses

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Tyrone Body v. State

Body broke into his girlfriend's apartment, accused her of cheating and assaulted her. Body argued that because of their relationship, he had permission to enter the girlfriend's apartment. The Court ruled that, besides the fact Body was not a leaseholder, since they were not married, there was no conjugal mutual right to occupy the residence. **The state did not have to prove that Body lacked consent to enter, rather, consent to enter a residence is an affirmative defense to burglary and must be raised by the defendant and supported with whatever evidence the defendant wants to offer.** Whether or not the breaking and entering was done with any intent to commit a crime, assault in this case, was a jury question.

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Sufficiency of Evidence

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Connell Gray v. State

Gray admitted to accompanying a friend of his who shot and killed a lady. But Gray told police he did not know of the shooter's plan. Gray was not standing with the shooter, according to Gray, when the shooter shot. Gray and the shooter ran off in different directions but were seen together later. They had been seen together during the day before the shooting. Gray was convicted of first-degree murder.

The Court said, "We note that a jury may [] infer participation based on one's presence, companionship, and conduct before and after the offense."

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James Sims v. State

Sims was on foot and was stopped near a crime scene by police searching for a suspect. He repeatedly refused to remove his hands from his pockets, was "irate" and cursed police in a public place and resisted arrest. He was convicted of disorderly conduct and resisting arrest.

The Sims majority held that there was sufficient evidence of disorderly conduct based on the "actions, behavior, and offensive language" of the defendant. The officer lawfully arrested Sims for disorderly conduct when he failed to obey police commands to show his hands and place them on the car under circumstances that could lead to a breach of the peace. Sims was a potential suspect in a crime that had already been committed.

The investigatory stop of Sims was found to be valid and Sims' refusal to comply with the officers' instruction to remove his hands from his pockets increased the risk of danger for the officers, i.e., a breach of the peace. Sims was not arrested for his public profanity alone. Sims was arrested for a combination of conduct and words.

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Christopher Jones v. State

An officer looking for Jones spotted him at a Sonic drive-in. When Jones saw the officer who called out to him, Jones handed a soda can to a companion - Ford.

The officer got the can from Ford, twisted the top off and found cocaine and meth. Ford testified that Jones handed him a gun and the drink can after the officer called to Jones. Ford said that the gun and the can both belonged to Jones, and Jones argued on appeal, no transfer since Ford's possession was not permanent.

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Christopher Jones v. State - cont.

The Court found there was sufficient evidence that Jones intended to get the drink can and the drugs out of his possession and into Ford's hands. It was not necessary for the State to prove that Ford planned on keeping the drugs for any particular length of time. The State only needed to show that Jones intended to conceal the can by getting it out of his hands into the hands of another. Accordingly, there was sufficient evidence for the jury to find that Jones transferred the drugs. Jones also argued that "there's no evidence that [he] was aware of the contents of the can." However, the jury could logically infer that Jones was aware of the contents of the can from the fact that he tried to conceal it by handing it off to Ford.

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Retroactive Misjoinder

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Christopher Jones v. State- cont.

The jury found Jones not guilty of possession of a firearm by a convicted felon.

Jones argued that his acquittal on the firearm charge entitled him to a new trial on the drug charges under the doctrine of retroactive misjoinder.

The Court observed that the doctrine of retroactive misjoinder does not necessarily apply when a jury returned a split verdict finding the government's proof one or more counts unpersuasive.

Rather, "[t]he doctrine of retroactive misjoinder applies when the defendant was prejudiced by evidence admissible only on a charge that failed or was invalid as a matter of law." **If there is any issue about misjoinder, it is best to file a pre-trial motion for severance ... "the time to decide whether it is fair to subject a defendant to a single trial for a variety of crimes is before trial."** Failure to do so waives the severance issue on appeal.

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Conspiracy

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Duane Henderson v. State

Henderson told April Newman he could get her some meth. April contacted police and they set up a controlled drug delivery from Henderson. Police pulled Henderson over on his way to the deal and during a consensual search of his vehicle and person, they found meth. Henderson was charged with conspiracy to distribute meth and possession with intent to distribute.

The Court found that the State failed to prove Henderson conspired with anyone to distribute methamphetamine. April only posed as a drug user and arranged the buy. Because the two did not conspire to distribute methamphetamine, Henderson's conspiracy conviction was reversed and rendered.

BTW - § 97-1-1(2) was amended to criminalize **unilateral conspiracies** – when a person “voluntarily and willfully” enters a criminal conspiracy with a law enforcement officer or informant without any entrapment.

The State must prove a mutual agreement to accomplish a common criminal objective even though the officer or informant had no true criminal intent. April's role as an informant did not preclude a conspiracy conviction. But the State still had to prove a conspiracy existed between April and Henderson, but there was no evidence that Henderson had conspired with April to distribute the drug.

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Search and Seizure

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Torres v. Madrid (SCOTUS)

Two officers approached Torres while searching for a wanted person. Torres got into a car and closed the door. One of the officers tried opening the door, but Torres drove off. Both officers fired at the moving car. Two of the shots hit Torres, but she continued driving. She pulled over and stole another car and drove to a hospital 75 miles away. Torres was later found and arrested.

She pleaded no contest to numerous charges and subsequently sued the officers under Section 1983, claiming that they unreasonably seized her in violation of the Fourth Amendment. The Supreme Court granted certiorari to resolve the question of whether the application of physical force to a person is a seizure even if the force is insufficient to gain control of the person.

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Torres cont.

The *Torres* Court opined that a Fourth Amendment seizure occurs when an officer applies “physical force to the body of a person with intent to restrain...even if the person does not submit and is not subdued.”

The Court concluded that Torres was seized for Fourth Amendment purposes when the officers’ bullets—fired with the intent to restrain—struck her. It was irrelevant that Torres continued to flee after being shot. The Court stressed that its decision was a narrow one that would not convert all incidental touches into seizures because such touches would not be accompanied by an intent to restrain. The Court also highlighted that “the Fourth Amendment does not recognize any continuing arrest during the period of fugitivity.” Thus, if an officer touches a person with the intent to restrain and the individual immediately escapes, only a brief seizure has occurred. The Court made clear, however, that “brief seizures are seizures all the same.”

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Michael Buford v. State

Responding to a call about a landlord-tenant dispute, an officer asked Buford, a holdover tenant, “did he have any issues with [the officer] searching him and he advised he did not.” The officer did a pat-down of Buford’s person and felt a can of smokeless tobacco. He opened the tobacco can and found crystal meth. Buford testified that he never gave the officers consent to search his person. On cross-examination, the officer stated that he did not specifically ask for consent to search the tobacco can but said that he asked Buford did he have any issues with me searching anything on him but did not ask him specifically about the can. Buford argued that any consent to the search of his person did not extend to the closed tobacco can found in his pocket.

Police do not have to separately request permission to search each closed container found during a general search. It was reasonable for Buford to expect a search of the can - he was wearing only a pair of shorts, so it cannot be said that he retained a reasonable expectation of privacy in the contents of a tobacco can found in his pocket.

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Caniglia v. Strom (SCOTUS)

Caniglia put a gun on a table and asked his wife to shoot him during an argument. The wife left and stayed overnight at a hotel. The next morning the wife asked the police to conduct a welfare check. She met officers at the home where they found Caniglia on the porch. He denied being suicidal but agreed to a psychiatric evaluation. After Caniglia left for the hospital, the officers warrantlessly entered the home and seized Caniglia’s guns. Caniglia later sued the officers in U.S. District Court under Section 1983, claiming that they violated his Fourth Amendment rights.

SCOTUS granted certiorari to determine if the community caretaking doctrine extended to homes.

The holding was that the community caretaking doctrine does not authorize the warrantless entry into a home. Consistent with its longstanding practice of affording the home paramount Fourth Amendment protection, the Court explained that “[w]hat is reasonable for vehicles is different from what is reasonable for homes.”

Concurring opinions emphasized that the ruling did not alter the exigent circumstances exception “to assist persons who are seriously injured or threatened with such injury” where the requirements would likely be met in many commonly occurring “welfare check” scenarios.

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Double Jeopardy

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Arlandris Jones v. State

Jones was convicted of aggravated assault and abuse of a vulnerable person. He hit an elderly woman over the head with a stick and stole her purse. Jones was acquitted of armed robbery.

The prohibition against double jeopardy did not preclude Jones' aggravated assault conviction, with enhancement for an over 65-year-old victim, coupled with a conviction for abuse of a vulnerable person.

Enhancements to a sentence "do not overlap with the elements of another felony" so, "sentence-enhancement statutes under which additional terms of imprisonment are imposed do not result in double-jeopardy violations."

Holding: The "aggravator" of a conviction for attacking a person sixty-five years or older "does not delineate an independent substantive offense" from the crime of aggravated assault and does not trigger a violation of double jeopardy.

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Ineffective Assistance of Counsel

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Cynthia Burford v. State

Burford was with her boyfriend who committed a house burglary. The issue was whether Burford was an accessory before the fact (i.e., a principal) or an accessory after the fact.

Burford gave a confession to being present and participating in the get away, but her admissions were admittedly induced by multiple promises of reward.

Counsel did not file a motion to suppress but objected to Burford's confession after it had been introduced. Burford's burglary conviction was reversed for ineffective assistance of counsel.

"Under the circumstances, defense counsel rendered deficient performance by failing to make a timely motion to suppress the video confession and a subsequent written confession. Burford was prejudiced because a reasonable probability existed that the trial court would have granted a timely motion to suppress the confessions which was the primary evidence of Burford's guilt of burglary of a dwelling.

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Patrick Newell v. State

Newell was stopped for speeding. A subsequent search of his vehicle with a warrant produced a stash of meth.

During a recorded interview, Newell was asked about the traffic stop but was also questioned about his participation in, or knowledge of, other unrelated crimes and investigations.

Newell's first attorney filed motions to suppress fruits of the search and the interview. These motions were never brought up for a ruling and trial proceeded with a second attorney and Newell was convicted.

On appeal, Newell argued ineffective assistance of counsel for counsel (1) failing to pursue a motion to suppress evidence obtained during the search of his vehicle, and (2) failing to object to the testimony presented regarding prior alleged bad acts.

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Newell, cont.

The Court declined to review the suppression component because the record was not developed enough, but the court considered admission of the prior bad act evidence introduced without objection and found that it was trial strategy.

During the interview, the interviewer spent most of the time getting info about a bigger target named "Mon." Newell's defense was that the drugs in the car belonged to someone else. Newell testified that "Mon" borrowed his car on occasion to transport drugs. Newell's counsel's closing argument relied on the contents of the video interview to present Newell's defense. The defense theory was that the meth could have been left in Newell's vehicle by "Mon" – it was an informed and strategic decision not to object – not ineffective assistance.

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Character Evidence

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Robert Decatur v. State

Second degree murder over a dispute about a dog. Decatur was prevented from offering the testimony of his good character for peacefulness- Rule 404(a). The COA found that it was error to exclude the testimony, but the error was harmless. Court ruled no prejudice, because Decatur (alone) was able to present evidence of his defense.

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Hearsay

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Robert Decatur v. State, cont.

Decatur also wanted to present witness testimony that the victim was one of three men who had threatened him prior to the shooting. The trial court had ruled the threats were hearsay.

The COA agreed with the trial court because, 1. The victim was not the one said to have made threats (relevance); 2. There was no proof that Decatur had knowledge of the threats which were communicated to others, but never to Decatur.

Decatur testified regarding the threats, he stated that Butler was the one who called him prior to the shooting and acted in a hostile manner toward him not the victim. Therefore, Decatur failed to demonstrate "a causal relationship between the threat and the purpose for which it was offered."

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Lavar Williams v. State

The trial court refused to admit an affidavit of a guy named Michael Brown taking responsibility for Williams' marijuana charge. Brown could not be found, so Williams argued the hearsay exceptions of unavailable witness and statement against interest.

On appeal, the Court agreed with the trial court's finding that the defense did not try hard enough to find Brown to serve him – they had a subpoena issued Friday for a Monday trial – lack of diligence. The affidavit was not admissible as statement against interest because Williams had another man named Smith sign a similar affidavit for a gun Williams was charged with possessing. Smith testified that he signed his affidavit under coercion. The Court determined that since Brown's affidavit was signed the same day – there was a lack of proof of trustworthiness – no abuse of discretion in denying Brown's affidavit.

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Manslaughter Instruction

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Robert Decatur v. State

Decatur not entitled to a heat of passion manslaughter instruction. Although Decatur testified that Butler had made threats against him and was initially hostile when they spoke on the phone, Decatur stated that he diffused the situation before ending the conversation. As discussed, our caselaw holds that words and disagreements, without more, constitute insufficient provocation for heat-of-passion manslaughter. The evidence failed to support Decatur's assertions that he acted due to uncontrollable passion or anger that was "suddenly aroused at the time of the killing by some immediate and reasonable provocation."

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Circumstantial Evidence Instruction

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Johnny News v. State

The issue was not raised by either party. Recognizing that there is but one burden of proof in criminal cases, the Court, sua sponte, overruled prior case law that required a special instruction "ramping up" the burden of proof in circumstantial evidence cases, because circumstantial evidence is given the same weight as direct evidence and can support a jury's guilty verdict.

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Sentencing

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Lavar Williams v. State

Dexter Smith was arrested after a controlled FedEx delivery of 1.8 kilos of weed. The residence belonged to Lavar Williams. Smith said Williams hired him to take the deliver. A search of the residence produced cocaine, more weed and guns.

Was the sentence for the drug charges disproportionate? Williams was convicted of possession with intent – one count for weed, one count for the coke; he was sentenced as a 93-19-81 habitual and a subsequent drug offender - which doubled everything (60(pot) + 80 (coke) = 140 years). The sentences are running concurrently. The Court said the sentences are within the statutory ranges and not unconstitutionally disproportionate.

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Allen Russell v. State

Good dissents on disproportionate sentencing.

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Expungement

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Azalean Rogers v. State

Rogers was sentenced for check forgery in two cases. The sentences of 3 years suspended in each case ran together, on three years of probation. Rogers completed her sentence and moved for expungement in each case. The circuit court only granted the expungement in the first case, but not the second. The COA reversed.

Section 99-19-71(2)(a) says that a person is eligible for only one (1) felony expunction and the terms "one (1) conviction" and "one (1) felony expunction" mean and include all convictions that arose from a common nucleus of operative facts. The record is silent as to whether Roger's two cases arose from a common nucleus of operative facts. So, the COA vacated the circuit court's order of expungement and remanded the case for an evidentiary hearing as to whether Rogers' forgery convictions "arose from a common nucleus of operative facts." If the circuit court determines that is the case, the circuit court has the discretion to expunge both of Rogers' convictions.

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Felony DUI

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Raymond Hughes v. State

PCR - Hughes pled to two felony DUIs - a 2017 DUI (3d) and 2018 DUI (4th) at the same time.

The Court found that an out of state DUI more than five years old could not be used - as plainly provided in the statute - out went the 2018 DUI. The 2017 DUI, could not be used to make a fourth because the cases were pled at the same time.

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Experts

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Tommie Queen v. State

A man with some twenty-one years of investigating cruelty to animals and a "nationally certified animal-cruelty officer", and only some formal training or education in dog fighting was properly allowed to testify as an expert that certain equipment and the manner in which Queen kept his numerous dogs, circumstantially showed that Queen was raising fighting dogs and conducting dog fights. The expert's opinion and the circumstantial evidence providing the basis for the opinions was sufficient for conviction.

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Interpreters

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Luis Miguel Garcia-Lebron v. State

On appeal, Garcia-Lebron argued that the use of an uncertified court interpreter resulted in reversible error. Rule 4(A)(2) of the Mississippi Rules on Standards for Court Interpreters allows a court to appoint a "[n]on-credentialed court interpreter" if a certified or registered interpreter is not available, but "only upon a finding that diligent, good faith efforts to obtain an interpreter of higher preference have been made and none has been found to be reasonably available."

The prosecution provided proof that Baertich had successfully completed the AOC "Mississippi Court Interpreter Ethics and Skill Building Workshop and also provided a letter from the AOC congratulating Baertich for passing "the Written Examination of the Mississippi Court Interpreter Credentialing Program." Baertich's curriculum vitae showed that Baertich has a BA in Spanish and a Masters Teaching Spanish/English. She had been consistently employed as a Spanish professor at the University of Southern Mississippi since 2007.

Although the circuit court did not expressly make the findings contemplated in Rule 4(B), the Court found that the omission was harmless error since there was more than sufficient information in the record to support the requisite findings. Finally, Garcia-Lebron did not demonstrate any prejudice.

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Changes in the Law – Retroactive or Not

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Edwards v. Vannoy (SCOTUS)

The Court refused to apply its 2020 decision in *Ramos v. Louisiana* (unanimous verdict requirement) retroactively to cases on federal collateral review. The Court made explicit what had been implicit for years—a new rule of criminal procedure will never apply retroactively to cases on collateral review.
